IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19..12..2007

Coram:

The Honourable Mr. Justice K.CHANDRU

W.P. No. 3119 of 2007

S. Gowrishankar (Minor)
Rep. by Legal Guardian
Tmt. K. Ranganayagi .. Petitioner

vs.

1. The Secretary to Government
Government of Tamil Nadu
Finance (Pension) Department
Fort St. George
Chennai - 9

2. The District Adi Dravida Welfare Officer
Villupuram

3. The Accountant General
Tamil Nadu Circle
Chennai .. Respondents

Petition under Art.226 of the Constitution of India, praying for a Writ of Mandamus directing the first respondent to issue suitable orders to sanction the Family Pension and Death cum Retirement Gratuity in favour of (minor) S. Gowrishankar w.e.f. 18.10.1997 through the petitioner being the legal guardian without further delay.

For Petitioner : Mr. R. Vijayakumar

For Respondents 1&2 : Mrs. C.K. Vishnupriya, GA

For Respondent 3 : Mr. V. Vijay Shankar

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ORDER

Heard the arguments of Mr. R. Vijayakumar, learned counsel appearing for the petitioner, Mrs. C.K. Vishnupriya, learned Government Advocate representing the respondents 1 and 2, and Mr. V. Vijay Shankar, learned counsel for the third respondent and have perused the records.

2. The petitioner S. Gowrishankar is a minor represented by his grandmother K.Ranganayagi. The petitioner is the son of Tmt. S. Indira Gandhi, who had joined the service as an Assistant on 11.01.1983 in the office of the District Adi Dravidar Welfare Department at Villupuram. She died in harness in a fire accident on 18.01.1997 after putting in 14 years of service leaving behind her only minor son S.Gowrishankar. At the time of her death, he was 11-1/2 years old. The minor Gowrishankar was born to the petitioner and to one Sathyanathan, who was working in the Revenue Department who was already married and he was born on 11.12.1995. He never lived with his father Sathyanathan and was taken care of by his maternal grandparents M/s Kuppusamy and Ranganayagi.

3. The maternal grandfather Kuppusamy filed a suit before the District Munsif Court, Gingee to declare the minor Gowrishankar as the legal heir of late Tmt. Indira Gandhi for the purpose of getting the pensionary benefits of his deceased mother. In the suit, Sathyanathan was shown as defendant and on 11.02.1998, the suit was decreed as prayed for. After obtaining the Succession Certificate on 16.4.1999, the second respondent District Adi Dravida Welfare Officer, Villupuram, forwarded a proposal to the third respondent along with the pension papers so as to get the Family Pension and Death-Cum-Retirement Gratuity [for short, 'DCRG'] in the name of minor Gowrishankar.

4. In the meanwhile, his grandfather Kuppusamy died on 17.4.2000 and his grandmother Ranganayagi filed Guardian O.P. No. 60 of 2000 to get the guardianship of minor Gowrishankar. In that petition, the said Sathyanathan, father of the minor Gowrishankar, was made as respondent. By an order dated 06.6.2001, the O.P. was allowed and Ranganayagi was appointed as the Guardian for the person and property of minor Gowrishankar.

5. Despite all these efforts, the respondents have not sanctioned pension and DCRG in favour of minor Gowrishankar. On 12.02.2002, the third respondent Accountant General replied to the petitioner that the order of the Government was awaited regarding admissibility of the Family Pension to the children of the unmarried Government servant. The petitioner sent a legal notice and informed

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the Government that by virtue of G.O. Ms. No. 602 Family Pension Department dated 13.9.1996, an illegitimate child is also eligible for family pension. Since there was no reply, the present writ petition was filed in the name of the petitioner by his maternal grandmother.

6. A counter affidavit dated 14.3.2007 was filed on behalf of the third respondent. It is stated that the pension proposal sent on behalf of the minor Gowrishankar was returned because the Government vide letter dated 6/92 cancelled the family pension benefit to the children of unmarried Government servants, which was given earlier vide G.O. Ms. No. 1375 Finance (Pension) Department dated 27.12.1990. Subsequently, by G.O. Ms. No. 602 Finance (Pension) Department dated 13.9.1996, the Tamil Nadu Pension Rules, 1978 was amended to include children born through illegitimate wife as also part of the family member of a Government servant. But it is stated that the said concession will not apply to children born to an unmarried Government servant as those persons are not included in the list of family members. Therefore, it was stated that the family pension is not authorised by the third respondent to children born to unmarried Government servants. It is further stated that though letters were addressed to the State Government for making appropriate changes, there was no reply from the State Government and, therefore, the respondents were not authorised to sanction pension.

7. By virtue of G.O. Ms. No. 602 Finance Department dated 13.9.1996, the Tamil Nadu Pension Rules, 1978 had undergone changes and the following amendments can be noted in terms of Rule 45, 46 and 49 and Form 3 and 11.

"In the said Rules, -

(1) in rule 45, in sub-rule 5, -

(a) for clause (iii), the following clause shall be substituted, namely:-

"(iii) sons including step sons, adopted sons and <u>sons born through illegitimate wife</u>";

(b) for clause (iv), the following clause shall be substituted, namely:-

"(iv) unmarried daughters including step daughters, adopted daughters and <u>unmarried daughters born through illegitimate wife</u>.";
and

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(c) for clause (v), the following clause shall be substituted, namely:-

"(v) widowed daughters including step daughters, adopted daughters, and widowed daughters born through illegitimate wife".

(2) in rule 46, in Note (ii), in Clause (b), sub-clause (i) shall be omitted;

(3) in rule 49, in sub-rule (13), in Clause (b), in sub-clause (ii), for the words "including such son and daughter adopted legally", the words "including such son and daughter legally adopted and also such son or unmarried daughter born through illegitimate wife" shall be substituted;

(4) in Form 3, under the heading "Family for this purpose means," in item (c), after the words "including such son and daughter adopted legally", the words "and also such son or unmarried daughter born through illegitimate wife" shall be added; and

(5) in Form 11, for the words "including step children and adopted children", the words, "including step children, adopted children and children born through illegitimate wife" shall be substituted."

[Emphasis added]

8. Subsequently, the third respondent had taken a decision by an office note dated 11.02.2002 to extend family pension to children of illegitimate husband and sought the Government to make amendment by his letter No. PMI/III/FP/2001-02/614 dated 13.02.2002. In the meanwhile, as there was no response from the State Government, the issue is yet to be resolved. If the Pension Rules provide for family pension and DCRG to be given even to an illegitimate child born though an illegitimate wife as per G.O. Ms. No. 602 on account of the death of the father and if amendments have been made to include the sons and daughters born to an illegitimate wife within the term 'family', there is no reason why the State should deprive the same benefit to the children of an unwed mother. In either case, the status of such children is not legally admitted. But in one case, it is given in the context of a man, who marries twice and the children of an illegitimate wife are accepted for family pension.

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9. In the present case, minor Gowrishankar is the biological son of late Tmt. Indira Gandhi and by no stretch of imagination, his claim can be excluded. It is ironical that minor Gowrishankar can inherit the pensionary benefits of his father Sathyanathan, whose marriage with Tmt. Indira Gandhi was not valid whereas he cannot inherit the pensionary benefits of his own biological mother.

10. It must be noted that Convention No. 103 of the International Labour Organisation concerns maternity protection, which was revised on 07.9.1955, for the purpose of getting maternity benefit defines the term 'woman' in Article 2, which reads as follows:

> "For the purpose of this Convention, the term "woman" means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term "child" means any child whether born of marriage or not."

11. Our country is a party to the said Convention and in view of the same, The Maternity benefit Act, 1961 was enacted adopting the same principle. This definition will clearly show that for the purpose of conferring maternity benefit, giving birth after a marriage is not relevant. The intention is to protect the mother and the child. If the child born for an unwed mother is denied the right of inheritance from his own mother, then there will be a likelihood of the child being not cared by the society and becoming a vagrant which can never be the intention of our Constitution makers. Article 39(e) of the Constitution states that,

> The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

12. The Supreme Court vide its decision reported in *AIR 1997 (10) SCC 549 [Bandhua Mukti Morcha v. Union of India]* held that the Article 21 has to be interpreted to include the right to live with human dignity free from exploitation in the light of our directive principles of State Policy contained in Articles 39(e) and (f).

13. If the interpretation given by the respondents is to be accepted, then it will result in discrimination against women and India is a signitory to the Vienna Convention on the Elimination of

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all forms of Discrimination Against Women (CEDAW). In the decision reported in *1996 (5) SCC 125 [Madhu Kishwar and others v. State of Bihar and others]*, it has been held by the Supreme Court in paragraphs 23, 25, 27 and 28 as follows:

Para 23: ".... Vienna Convention on the Elimination of all forms of all forms of Discrimination Against Women (for short" CEDAW") was ratified by the U.N.O. on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity, Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines discrimination against women to mean,

> "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2(b) enjoins the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women" to take all appropriate measures including legislation, to modify, or abolish existing laws, regulations, *customs and practices which constitute*

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discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that

> "the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women."

Article 14 lays emphasis to eliminate discrimination on the problems faced by rural women so as to enable them to play "in the economic survival of their families including their work in the non-monetized sectors of the economy and shall take ... all appropriate measures .....". Participation in and benefit from rural development in particular, shall ensure to such women the right to participate in the development programme to organize self groups and co-operatives to obtain equal access to economic opportunities through employment or self-employment etc. *Article 15(2) enjoins to accord to women equality with men before the law, in particular, to administer property..."*

Para 24: "Article 5(a) of CEDAW to which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-a-vis Articles 1,3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and teeth for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender based discriminations

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as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures including legislation, modify law and abolish gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women."

Para 27: "Bharat Ratna Dr. B. R. Ambedkar stated, on the floor of the Constituent Assembly that in future both the legislature and the executive should not pay mere lip service to the directive principles but they should be made the bastion of all executive and legislative action. Legislative and executive actions must be conformable to, and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in Part IV and the Preamble of the Constitution which constitute conscience of the Constitution. Covenants of the United Nation add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is instrument of social change as well as the defender for social change. Article 2(e) of CEDAW enjoins this Court to breath life into the dry bones of the Constitution, international Conventions and the Protection of Human Rights Act, to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights.

Para 28: "As per the U.N. Report 1980

> "women constitute half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one hundredth per cent of world's property".

Half of the Indian population too are women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. Articles 13, 14, 15 and 16 of the

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> Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy."

14. It must be noted that Tamil Nadu is a pioneer in the abolition of Devadasi system even before India became independent. At that time, even our freedom fighters were not only fighting for abolition of Devadasi system but also wanted to ensure a dignified life for such of those women. Attempts were made to provide inheritance right to children born to such unwed mothers.

15. Section 3(1)(j) of the Hindu Succession Act reads as follows:

> "related" means related by legitimate kinship:
>
> Provided that illegitimate children shall be deemed to be related to their mothers and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative is to be construed accordingly.

Under the Hindu Succession Act, illegitimate children are not excluded from inheritance to sreedhana.

16. Even a legitimate son cannot exclude an illegitimate daughter. [See: *C. Narayani Ammall v. Govindasamy Naidu (1976 (88) Madras Law Weekly 129* (Full bench)]. Although a woman suffered degradation from her family, according to Hindu Law, she did not severe relationship with her kindred with the result of her property devolved as if it is her sreedhana. [See: *Subramania Pillai v. Ramasamy Pillai (1899 ILR Madras) 171*].

17. Though it can be argued that the Succession Act has no place in the matter of Pension Rules, which have been framed specially under Article 309 of the Constitution, yet for the purpose of interpretation, the principles enunciated in the Succession Laws as well as the Labour Legislations will have a bearing on these matters.

18. In the present case, if the interpretation of the respondents has to be accepted, then the minor Gowrishankar can inherit his biological father Sathyanathan's pensionary benefits as an illegitimate son but he will be denied the pensionary benefits of

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his own mother for no fault of his. This will lead to awkward situation. Such an interpretation will be violative of Articles 14 to 16 of the Constitution of India.

19. In the light of the above, the writ petition stands allowed. The respondents are directed to finalise the family pension papers in respect of minor Gowrishankar and pass appropriate orders in the light of this judgment within a period of four weeks from the date of receipt of a copy of this order. The DCRG payable to late Indira Gandhi also should be paid to Tmt. K. Ranganayagi, legal guardian of minor Gowrishankar within a period of four weeks from the date of receipt of a copy of this order. No costs.

Gri

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government
   Government of Tamil Nadu
   Finance (Pension) Department
   Fort St. George
   Chennai - 9

2. The District Adi Dravida Welfare Officer
   Villupuram

3. The Accountant General
   Tamil Nadu Circle
   Chennai

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